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v. Toolan. Supra; City of Augusta v. Mettle, 115 Ga., 124; *Clemence v. City of Auburn,* 66 N. Y., 334.

PUPLIC LANDS—CONVERSION OF GUM FROM BOXED TREES—INNOCENT PURCHASERS OF PRODUCT.—UNITED STATES V. WATERS-PIERCE CO., 180 FED. REP. 309.—*Held,* where gum taken from trees on public land under homestead entry, in violation of law, was sold to distillers, and by them manufactured with other gum into turpentine and resin, which was sold to an innocent purchaser, that the United States has no title to such products which will support an action of conversion against the purchaser.

In general, where trees, minerals, or other products are severed from the land by an intentional trespass, that property severed still belongs to the owner of the land, and he may reclaim it wherever found, and in whatever condition it may be at the time. *Cooley on Torts* (3rd. ed.), 72. New York carries this doctrine very far. *Silsbury v. McCoon,* 3 N. Y., 379.. If the trespass was unintentional, or by mistake, whether the owner can recover depends upon the relative value of the originals and the expenditures upon the same, upon how great is the disparity between the original materials and the property sought to be reclaimed, and upon the relative injustice and hardship upon the parties. *Wetherbee v. Green,* 22 Mich., 310; *Isle Royal Mining Co. v. Hertin,* 37 Mich., 332; *Eaton v. Langley,* 65 Ark., 448; *Lake Shore & Michigan Southern Railroad Company v. Hutchins,* 32 Ohio St., 571. But the importance of enhancement in value is questioned in *Strubbee v. Trustees Cincinnati Railway,* 78 Ky., 481. There are exceptions and qualifications to the general rule as to intentional trespasses. Even those who purchase from the trespasser acquire no better title than the trespasser. *Anderson v. United States,* 152 Fed. Rep., 87. But the rights of third parties, when they intervene, and when full protection can be given to the innocent party whose goods have been wrongfully used, will be protected. *National Park Bank v. Goddard,* 30 N. Y. Supp., 417. Also, the owner, if he has notice of the conversion and knowledge that sales are to be made, cannot recover the property from a purchaser in good faith, or hold him responsible for the conversion. *Preston v. Witherspoon,* 109 Ind., 457; *Foster v. Warner,* 49 Mich., 641. Without such notice or consent the owner may recover from an innocent purchaser. *Strubbee v. Trustees Cincinnati Railway, supra.*

SALES—BREACH OF CONTRACT—MEASURE OF DAMAGES.—HARDWOOD LUMBER CO. V. ADAM AND STEINBRUGGE, 68 S. E. (GA.), 725.—*Held,* that in a suit for breach of contract for failure to deliver certain goods, of a specified quality and sold at a specified price, the measure of damages is the difference between the contract price and the market price at the time and place of delivery.

The courts are universally agreed on the above rule, and hold it invariably where the contract is executory and the purchase price not having been paid. *Saxe v. Penokee Lumber Co.,* 159 N. Y., 371. *Bartlett v. Blanchard,* 13 Gray (Mass.), 429. But the parties may expressly stipulate beforehand what the measure of damages shall be in case of a breach of

contract. *Street v. Chapman,* 26 Ind., 142; *Sawyer v. McIntyre,* 18 Vt., 27. Where perchance there is no market price at the stipulated place of delivery, the weight of authority upholds the rule that the prevailing market price at the nearest market, plus the cost of transportation to the place of delivery is the proper means of estimating the damages. *Grand Tower Miss, Ect. Co. v. Phillips,* 23 Wall., 471. *O'Gard v. Ellsworth,* 83 N. Y. Sup., 120. If the contract price be equal or less than the market price, in such case no actual damages can be recovered. *Buckley v. Holmes,* 19 Ill. Ap., 530. Providing there be any special damages, the court will not presume them, but they must be alleged and proved. *Strauss v. Scott,* 59 N. Y. Sup., 826. Some courts have also allowed nominal damages, in cases where the market price was equal or less than the contract price. *Moses v. Rasin,* 14 Fed., 772. In case no time has been fixed for delivery, damages will be estimated with reference to the time of the refusal to deliver. *Williams v. Wood,* 16 Md., 220; *Eastern R. Co. v. Benedict,* 10 Gray (Mass.), 212.

STREET RAILROADS—CARE REQUIRED—RIGHT OF PARTIES ON TRACK.—MERRILL V. SHEFFIELD CO., 53 So., 219 (ALA.).—*Held,* that a street company's right to use a track is superior to the traveller's, in that it is the latter's duty to vacate the track in favor of the car, since it is confined to that part of the street.

The above decision is in harmony with the weight of authority holding that a street railway's right to use that part of the street occupied by its tracks is paramount to the rights of persons travelling or driving thereon. *Moore v. Railroad,* 126 Mo., 265; *Heffron v. Railroad,* 28 N. Y. Supp., 518; *Shea v. Railroad,* 44 Cal., 414. The drivers of vehicles must avoid undue interference with this superior right, but the law protects them from the negligence of the car company. *Railroad v. Zeiger,* 78 Ill., App., 463. This does not apply to street railway crossings, where neither street car nor vehicle has a right superior to the other. *O'Neil v. Railroad,* 129 N. Y., 125. However, this street right is not exclusive and drivers need only use reasonable precautions and give free and unobstructed passage when necessary for cars to pass. *Finkelstein v. D. D. Railroad,* 105 N. Y., 655; *Hicks v. Railroad,* 124 Mo., 115. But it is exclusive in the sense that the public must give way when the street car company has occasion to use the tracks for its traffic. *Ward v. Railroad,* 8 N. J. L., 23. The only limitation is that the cars have preference in the use of its tracks. *Adolph v. Railroad,* 65 N. Y., 554. Other courts have laid down the rule that neither car nor vehicle has a right superior to that of the other, but each must exercise its right with due regard to that of the other and that their rights are mutual and co-ordinate. *Railroad v. McKewan,* 80 Md., 593; *Swan v. Railroad,* 93 Cal., 179.